

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BEVERLY EDWARDS, LIKASHMI	:
DEOSARAN, RASHIDA WRIGHT, KERON	:
SEALEY, JAMES STEWART, SHAUNEY	:
DUNKLEY and MICHAEL SAMUELS, on	:
behalf of themselves and all others similarly	:
situated,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
PUBLISHERS CIRCULATION FULFILLMENT,	:
INC., also known as PCF, Inc.,	:
	:
Defendant.	:
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DECLARATION OF KEVIN M. DALY IN
SUPPORT OF DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

KEVIN M. DALY hereby declares as follows:

1. I am the Executive Vice-President-Distribution Services of Publishers Circulation Fulfillment, Inc. (“PCF”), I have been employed by PCF for almost eight years, and as such, I am fully familiar with the facts and circumstances recited herein.
2. I make this Declaration in support of Defendant’s Motion for Partial Summary Judgment.

PCF’S BUSINESS

3. PCF was formed in 1984 to support *The New York Times*’ circulation efforts.
4. Today, PCF operates as an independent distribution and contact center outsourcing business on behalf of over sixty publishing clients across the nation.

5. PCF's business includes providing circulation and data services to its multiple publisher-customers.

6. PCF, in aid of the circulation of its publisher-customers and as a means of outsourcing the delivery of periodicals for its publisher-customers, engages in New York the services of individuals and entities that sign an "Independent Contractor Agreement" ("ICA") and are classified by PCF as independent contractors.

7. Independent contractors in New York provide a vehicle for servicing their route(s), but PCF does not and has not required independent contractors in New York to purchase or lease (or even own) a vehicle.

8. PCF does not and has not required independent contractors in New York to provide or use any particular make, model, or type of vehicle.

9. Independent contractors in New York are free to and do use their vehicle for other business purposes and as their primary personal vehicle.

10. PCF does not and has not required independent contractors in New York to maintain or service their vehicle in any particular manner or method.

PCF'S RELATIONSHIP WITH PLAINTIFFS

11. The ICAs signed by Plaintiffs set forth the terms and conditions of their contractual relationships with PCF.

12. As a condition to providing services for PCF, PCF requires (and required) each Plaintiff to obtain a surety bond and provides a means to obtain such a surety bond from an independent third party broker licensed to issue such bonds, although each Plaintiff is (and was) free to obtain such a surety bond elsewhere.

13. Each of the Plaintiffs obtained the surety bond through the independent third-party broker and by signing ICAs agreed in writing to allow PCF to deduct a fee from their compensation, which PCF then passes (and passed) along directly to the third-party broker.

14. PCF also makes (and made) available through an independent third-party broker an optional accident insurance program for the benefit of Plaintiffs.

15. Those Plaintiffs who elected to participate in the accident insurance program agreed in writing to allow PCF to deduct a premium from their compensation, which PCF then passes (and passed) along directly to the third-party broker.

16. Every two-weeks, Plaintiffs are (and were) provided a settlement check representing their total compensation for the prior two-week period, net of any deductions, including those for accident insurance and bond premiums.

17. PCF does not withhold (and has not withheld) any income taxes from Plaintiffs' settlement checks.

18. At the end of each year, Plaintiffs are (and were) issued an IRS Form 1099 reflecting their total annual compensation from PCF.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 15, 2010

A handwritten signature in black ink, appearing to read 'Kevin M. Daly', is written over a horizontal line.

Kevin M. Daly